INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	3
Summary of argument	4
Argument:	
I. The purpose of Congress was to provide that no alien while serving on foreign ships should be credited with residence for naturalization purposes, although having a residence or domicile here for other purposes	6
II. The reasoning of the courts below is more persuasive than that in the conflicting decision in *United States* v. *Nicolich*, 25 F. (2d) 245	13
III. There is nothing in the Congressional Record or committee reports to justify overturning the decision below	16
Conclusion	17
Appendix	18

CITATIONS

Cases, etc.:	
Aquino, In re, 24 F. (2d) 759	11
Georgia Banking Co. v. Smith, 128 U. S. 174	9
MacKinnon, Petition of, 21 F. (2d) 445	10, 16
MacKinnon, Petition of, 193 App. Div. 883	16
Nicolich, In re, 17 F. (2d) 611	14
Schneider, In re, 164 Fed. 335	11
Schneider, Petition of, 19 F. (2d) 404	11
United States v. Babbit, 1 Black, 55	9
United States v. Habbick, 287 Fed. 593	15
United States v. Kummer, 300 Fed. 108	11
United States v. Rockteschell, 208 Fed. 530	11
United States v. Scruggs Dry Goods Co., 156 Fed. 940	9, 10
United States v. Nicolich, 25 F. (2d) 245	5, 6, 13
United States v. Whitridge, 197 U. S. 135	9
Ruling Case Law, vol. 25, p. 985	10

27751—28——1

	Page
Statutes:	
Act of June 7, 1872, c. 322, sec. 29, 17 Stat. 262, 268	15
Act of June 29, 1906, c. 3592, sec. 4, par. 4, 34 Stat. 596, 598 (U. S. C. Title 8, sec. 382)	2
Act of May 9, 1918, c. 69, 40 Stat. 542, 544 (U. S. C. Title 8, sec. 384)	2
R. S. 2174	15
Congressional documents:	
Senate Rept. No. 388, 65th Cong., 2d sess., p. 4	16
House Rept. No. 502, 65th Cong., 2d sess., p. 2	10, 17
Congressional Record, vol. 6, pt. 6, p. 6022	10

In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 117

DANIEL MICHAEL McDONALD, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 9) is reported in 22 F. (2d) 747. The findings of fact and order of the trial court may be found at pages 5–7 of the record.

JURISDICTION

The judgment to be reviewed was entered on December 2, 1927. (R. 16.) Petition for rehearing was denied on January 12, 1928. (R. 17.) On April 10, 1928, a Justice of this Court extended until May 1, 1928, the time within which petition

for writ of certiorari might be filed. (R. 17.) The petition was filed on April 28, 1928, and granted on May 28, 1928. (R. 18.)

QUESTION PRESENTED

An alien applying for naturalization had maintained a domicile and place of abode in the United States for five years immediately prior to his application, but during that period served on merchant vessels of foreign registry. The question is whether the proviso in the Act of 1918 to the effect that aliens can not secure residence for naturalization purposes during service upon vessels of foreign registry prevents his being credited with residence during such service.

STATUTES INVOLVED

Paragraph Fourth of Section 4 of the Act of June 29, 1906 (c. 3592, 34 Stat. 596, 598; U. S. C. Title 8, sec. 382), provides that to entitle an alien to citizenship—

> It shall be made to appear * * * that immediately preceding the date of his application he has resided continuously within the United States five years at least. * * *

The Act of June 29, 1906, was amended by the Act of May 9, 1918 (c. 69, 40 Stat. 542, 544; U. S. C. Title 8, sec. 384), by the addition of new subdivisions containing the following proviso:

> *Provided further*, That service by aliens upon vessels other than of American registry, whether continuous or broken, shall not

> be considered as residence for naturalization purposes within the jurisdiction of the United States, and such aliens cannot secure residence for naturalization purposes during service upon vessels of foreign registry.

Other pertinent parts of the Act of May 9, 1918, are in the appendix to this brief.

STATEMENT

The petitioner, a British subject, filed a petition for naturalization December 22, 1926. (R. 6.) He entered the United States September 17, 1920, at the port of New York, as a passenger on a steamship arriving from Peru. (R. 6.) The findings state that he has resided continuously in Massachusetts since September 17, 1920. (R. 5.) Since his arrival at the Port of New York he has been continuously in the service of the United Fruit Company, a New Jersey corporation, as the master of one of its steamships. (R. 6.) His wife joined him September 1, 1921, and he has since maintained a place of abode for himself, his wife, and child in Boston. (R. 6.) The statements in the findings no doubt mean that he has had a place of abode and domicile within the United States, but during a great part of the time since his arrival in 1920 has been outside the United States on voyages in vessels of foreign registry, being at his place of abode only between voyages.

He possesses all other requisites for naturalization, the only question being as to his residence.

The District Court denied naturalization on the ground that the proviso in the Act of May 9, 1918, above quoted, prevented his being considered a resident for naturalization purposes while serving on foreign vessels, notwithstanding his maintenance of a place of abode and domicile in the United States.

The Circuit Court of Appeals affirmed this decision, one judge dissenting.

SUMMARY OF ARGUMENT

I. The proviso in the Act of May 9, 1918, is general legislation and relates not merely to the context of the amendment, but to the whole Naturalization Act.

The words of the proviso show the intention of Congress to deny applicants for naturalization credit for domicile or residence in the United States during periods they serve on vessels of foreign registry. Congress had previously given advantages in naturalization to alien seamen serving on American vessels, allowing them to be naturalized after three years of such maritime service. The Act now being considered was intended to further encourage service on American merchant ships by discouraging alien seamen domiciled in the United States from serving on foreign ships. There is nothing unreasonable about this. An alien, though technically domiciled here, who spends most of his time outside the United States serving on foreign ships, is not in a position to

learn much of our institutions or to acquire an attachment to the principles of the Constitution.

A reading of the entire subdivision shows that the proviso is not limited to the classes of aliens dealt with in the subdivision, as there is no relation between service on foreign ships and the other classes of aliens dealt with in the new subdivision.

The words "service by aliens upon vessels other than of American registry" relate to all aliens in that service, and the words "such aliens" in the last clause of the proviso refer to the aliens serving on foreign vessels, mentioned in the preceding clause.

II. The reasoning of the courts below is more persuasive than that in *United States* v. *Nicolich*, 25 F. (2d) 245, in which the contrary conclusion was reached. The argument there that the proviso was intended only to prevent service on foreign ships from constituting in itself residence in the United States, is not reasonable. Saying that aliens serving three years on vessels of American registry might be naturalized did not make it necessary, out of abundance of caution, to add a proviso that service on vessels of foreign registry should not be considered service on American ships.

The proviso obviously deals with aliens serving on foreign ships who, by having domicile here, could claim residence.

The phrase "residence for naturalization purposes" implies the existence of residence for other purposes.

III. Nothing in the Congressional Record or Reports of Committees supports the contention of the petitioner or discloses an intention not derived from the words of the statute.

ARGUMENT

I

THE PURPOSE OF CONGRESS WAS TO PROVIDE THAT NO ALIEN WHILE SERVING ON FOREIGN SHIPS SHOULD BE CREDITED WITH RESIDENCE FOR NATURALIZATION PURPOSES, ALTHOUGH HAVING A RESIDENCE OR DOMICILE HERE FOR OTHER PURPOSES

The petitioner contends, and the United States Circuit Court of Appeals for the Fifth Circuit in *United States* v. *Nicolich*, 25 F. (2d) 245, held, that the proviso means only that service on vessels of foreign registry does not in itself constitute residence in the United States and that the proviso was not intended to deprive an alien seaman having a place of abode and domicile here, to which he returns between voyages, of residence for naturalization purposes, merely because of service on foreign vessels.

It would have been a waste of words to do what petitioner contends was done by this statute.

An alien serving on vessels of foreign registry and not maintaining any place of abode or domicile in the United States could not plausibly claim residence here. Congress would not have wasted its

time to make a statutory declaration of so self-evident a proposition.

The provision that service for three years on vessels of American registry entitled an alien to naturalization did not make it necessary for Congress to say "out of abundant caution" that service on foreign vessels should not have the same effect. It was not necessary for Congress to provide that where it said service on vessels of American registry it did not mean vessels of foreign registry. The proviso must have been enacted to apply to aliens who had some other pretensions to residence here than mere service on foreign vessels and to cover cases of this kind, and prevent an alien being credited with residence for naturalization purposes during service on foreign vessels, although maintaining a domicile here.

The phrase "residence for naturalization purposes" necessarily implies the existence of a residence for other purposes.

The petitioner contends that the proviso here in question is applicable only to the particular classes of aliens designated in the immediately preceding context of the Act of May 9, 1918. To make this clearer, he asks this Court to "interpolate the word '*such*' " before the word "aliens" in the first clause of the proviso. (Brief, p. 23.)

What classes of aliens are mentioned in the context of the Act of May 9, 1918, immediately preceding the proviso? They are, "any alien * * *

(1) who has enlisted or entered or may hereafter enlist in or enter the armies of the United States * * * or in the United States Navy or Marine Corps, or in the United States Coast Guard, or (2) who has served for three years on board of any vessel of the United States Government, or for three years on board of merchant or fishing vessels of the United States * * *" and (3) "any alien serving in the military or naval service of the United States during the time this country is engaged in the present war," and (4) "any alien declarant who has served in the United States Army or Navy, or the Philippine Constabulary, and has been accepted for service in either the military or naval service of the United States * * *." (See Appendix, p. 20.) These classes of aliens are made the special beneficiaries of the first paragraph of the Act of May 9, 1918, in that they are exempted from the five years' residence requirement contained in the same section of the Naturalization Act to which the Act of May 9, 1918, is amendatory. In the first three classes no proof of residence is required; in the fourth class, proof of three years' residence is required.

Consonant with the true office of a proviso to qualify or restrict or condition what has gone before, it is argued that the foregoing classes of aliens are the only aliens subject to the restrictions and inhibitions of the proviso in question. If this contention were sound, the proviso could apply only to

the fourth class, because it is the only class of whom any residence at all is required.

Besides, it is too plain for argument that this proviso dealing with service on foreign vessels has no relation whatever to the other special cases of military and naval service.

The words "such aliens" in the second clause of the proviso evidently relate to the aliens serving on foreign vessels, mentioned in the preceding clause.

There can be no reasonable doubt that the language of the proviso in question would include the petitioner if it had been enacted as an independent statute. Its effect is just the same, it is believed, despite the fact that it is brought into the Act of June 29, 1906, in the form of a proviso. As said in the case of *United States* v. *Whitridge*, 197 U. S. 135, 143: "While no doubt the grammatical and logical scope of a proviso is confined to the subject matter of the principal clause, we can not forget that in practice no such limit is observed," citing *Georgia Banking Co.* v. *Smith*, 128 U. S. 174, 181, where it is stated that the word "provided" may have "no greater signification than would be attached to the conjunction 'but' or 'and' in the same place, * * * simply serving to separate or distinguish the different paragraphs or sentences." Provisos have frequently been held to bring in new and independent matter rather than to limit or condition what has gone before. *United States* v. *Babbit*, 1 Black 55; *United States* v.

Scruggs Dry Goods Co., 156 Fed. 940, 942; 25 R. C. L. 985.

The practice of Congress in this regard is so familiar that it is unnecessary to cite the innumerable instances that are available. The very Act and section here under consideration contains an example of a general enactment in the form of a proviso. The proviso immediately before the proviso here in question reads:

> *Provided*, That it shall not be lawful to make a declaration of intention before the clerk of any court on election day or during the period of thirty days preceding the day of holding any election in the jurisdiction of the court. (40 Stat. 544; U. S. C. Title 8, sec. 374.)

It would be manifestly absurd to hold that this proviso, last quoted, applies only to the classes of aliens mentioned in the immediately preceding context of the Act of May 9, 1918. *Petition of MacKinnon*, 21 F. (2d) 445. See also House Report 502, 65th Cong., 2d Session; Congressional Record, Vol. 56, part 6, page 6022.

The petitioner argues that the other provisions of the Act of May 9, 1918, show a purpose to liberalize the naturalization laws, and therefore this proviso should not be construed to restrict the privilege. True, the Act does show liberality to those in the military or naval service of the United States and those in the American merchant marine, but that is no reason why Congress may not have in-

tended to make the naturalization laws less liberal to those serving in foreign vessels. Indeed, this proviso, construed as we contend it should be, is in accord with the purpose of the Act, by giving alien seamen having domiciles in the United States an inducement to service in vessels of American registry rather than in foreign ships.

The courts have generally held, as petitioner asserts, that domicile or residence for naturalization purposes may be maintained unbroken by temporary absences from the territorial limits of the United States, and have applied that rule to seamen.

United States v. *Rockteschell,* 208 Fed. 530.

In re Schneider, 164 Fed. 335.

The courts, however, have had some difficulty in applying the naturalization laws to cases of extended absence from the United States during the five years immediately preceding the filing of the petition. Although by maintaining here a place of abode and having an intention to return an absent alien may have a residence here, extended absence deprives him of the opportunity of learning about our institutions and becoming attached to the principles of the Constitution, and also makes it difficult for resident witnesses to qualify to testify as to the applicant's qualifications. See *In re Aquino,* 24 F. (2d) 759; *Petition of Schneider,* 19 F. (2d) 404; *United States* v. *Kummer,* 300 Fed. 106.

An alien, although technically domiciled in the United States, who spends most of his time outside of the United States serving on foreign vessels, is not in good position to learn about our institutions or prepare himself for citizenship, and it was not unreasonable for Congress to provide that he should not be credited with residence for naturalization purposes while serving on a foreign vessel. Besides, the fact that prior to the passage of the Act of May 9, 1918, the courts had held that an alien seaman having a residence or domicile in the United States did not lose it, for naturalization purposes, by absence on voyages in foreign vessels hurts instead of helps the petitioner's argument. It explains what Congress had in mind and intended to accomplish by this proviso. The phrase "continuous or broken" in the proviso confirms this.

The last contention of the petitioner rests on the use of the word "secure" in the clause "said aliens cannot secure residence for naturalization purposes during service upon vessels of foreign registry." The argument is that this relates only to initial acquisition of a residence, and that if the alien seaman acquires a residence here in the first instance, while not in the foreign merchant marine, his subsequent service on foreign vessels is immaterial. The petitioner strains the findings of fact too far in applying his theory. The findings do not fairly justify the claim that the petitioner established his residence first and afterwards entered

service on foreign vessels. They do not negative the possibility that he was in the service of the United Fruit Company prior to his arrival. The inference is that he has been in that service from the moment of his arrival, and that if he entered it upon his arrival, his obtaining a residence and his entry into that service were simultaneous. However, the case should not turn on any such narrow ground. We have no interest in maintaining it. Congress never intended to provide that an alien seaman acquiring residence at a period when not serving in a foreign merchant marine could the next day enter that service and remain in it without losing his residence for naturalization purposes, but that if residence here were acquired the day after he entered service on foreign vessels it should not be considered residence for naturalization purposes.

The statute is awkwardly worded, but its reasonable meaning is that residence, in the ordinary legal sense, shall not be considered residence for naturalization purposes while the alien is serving on vessels of foreign registry.

II

THE REASONING OF THE COURTS BELOW IS MORE PERSUASIVE THAN THAT IN THE CONFLICTING DECISION IN UNITED STATES *v.* NICOLICH, 25 F. (2d) 245

In *United States* v. *Nicolich*, 25 F. (2d) 245, the United States Circuit Court of Appeals for the Fifth Circuit reached a conclusion in conflict with

that of the Circuit Court of Appeals for the First Circuit in this case.

The opinion in the Fifth Circuit refers to the decision of the District Court as well-reasoned. That opinion in the District Court is reported as *In re Nicolich*, 17 F. (2d) 611. It disposes of the proviso here in question by the assertion that it relates "specifically to the particular classes of aliens defined therein, viz, Filipinos, Port Ricans, or aliens in the service of Army or Navy, Marine Corps, Coast Guard, or merchant marine." The District Court failed to point out any relation between the subject matter of the proviso and the specific cases mentioned in the preceding part of the new subdivision. We have dealt with this point above.

The Circuit Court of Appeals for the Fifth Circuit, in its opinion in the *Nicolich case*, gives no satisfactory reasons for its conclusions, nor did it, in rejecting the construction of the proviso we contend for, give any other meaning to its words. It asserted that the proviso related only to the specific classes of cases mentioned in the immediate context in the new subdivision. It has already been shown that the proviso, dealing as it does with service on foreign merchant vessels, has no relation to the cases mentioned earlier in the subdivision of service in the Army, Navy, Marine Corps, or American Merchant Marine. The Fifth Circuit's opinion also states that the proviso is merely declaratory of existing law and inserted out of abundance of

caution. We have already dealt with these claims in subdivision I of this brief. Certainly the clause "such aliens cannot secure residence for naturalization purposes during service upon vessels of foreign registry" is new. The court of the Fifth Circuit also said that the effect of the proviso contended for by the United States would be retroactive. As we construe it, no retroactive effect would have resulted in the *Nicolich case*. The petition for naturalization in that case was filed October 27, 1925. Although the seaman had entered the United States in 1914, the five-year period in question was subsequent to October 27, 1920. The proviso had been enacted in 1918. It operated only on service in foreign vessels after its passage.

In *United States* v. *Habbick*, 287 Fed. 593, it was held that where none of the applicant's service on foreign vessels occurred after the passage of the Act of May 9, 1918, the proviso had no application. There is no reason to question the soundness of that decision.

Neither the decision of the District Court nor that of the Circuit Court of Appeals, in the *Nicolich case*, is persuasive.

The dissenting opinion in the present case, speaking of the proviso, says (R. 13):

> It simply limits the new grant, grounded on war service, to American registry.

Of course, there was no new grant for service on American merchant vessels. The right to natu-

ralization based on such three-year service had been in the Act of June 7, 1872 (c. 322, sec. 29, 17 Stat. 262, 268) and R. S. 2174.

The decisions in *Petition of MacKinnon*, 193 App. Div. 893, and in *Petition of MacKinnon*, 21 F. (2d) 445, are well reasoned.

III

THERE IS NOTHING IN THE CONGRESSIONAL RECORD OR COMMITTEE REPORTS TO JUSTIFY OVERTURNING THE DECISION BELOW

The petitioner has quoted at length from the debates on the Act of May 9, 1918. Nothing is presented which throws any special light on this proviso. The Members of Congress had their attention directed to the clauses granting special privileges in naturalization to those in our military or naval service, and what they said was with those provisions in mind.

The Report of the Senate Committee said (Report No. 388, 65th Cong., 2d Session, page 4):

> It also restricts and prohibits the recognition of service by aliens upon vessels of alien registration as residence within the United States. Because of the exemption to aliens serving on vessels of the American merchant marine from the general provisions of the law, the courts have in many cases admitted aliens to citizenship after their declarations of intention although all the time preceding their admission to citizenship and, thereafter also, they have been serving on merchant vessels of foreign nations.

The Report of the House Committee said (Report No. 502, 65th Cong., 2d Sess., page 2):

> * * * The subdivision also prohibits the naturalization of aliens serving on vessels of foreign registry, this construction having been maintained by some courts in view of the provisions of section 2174, which recognizes service of aliens on vessels of American registry. * * *

These statements are less clear than the proviso. They do not aid materially in its construction, even if there be ambiguity justifying resort to the proceedings in Congress.

CONCLUSION

It is respectfully submitted that the decision below is sound and should be affirmed.

WILLIAM D. MITCHELL,
Solictor General.
O. R. LUHRING,
Assistant Attorney General.
GEORGE C. BUTTE,
Special Assistant to the Attorney General.
HARRY S. RIDGELY,
Attorney.

DECEMBER, 1928.

APPENDIX

Act of May 9, 1918, c. 69, "An Act to amend the naturalization laws and to repeal certain sections of the Revised Statutes of the United States and other laws relating to naturalization, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section four of the Act entitled "An Act to establish a Bureau of Immigration and Naturalization and to provide a uniform rule for the naturalization of aliens throughout the United States," approved June twenty-ninth, nineteen hundred and six, be, and is hereby, amended by adding seven new subdivisions as follows:

[1]

Seventh. Any native-born Filipino of the age of twenty-one years and upward who has declared his intention to become a citizen of the United States and who has enlisted or may hereafter enlist in the United States Navy or Marine Corps or the Naval Auxiliary Service, and who, after service of not less than three years, may be honorably discharged therefrom, or who may receive an ordinary discharge with recommendation

for reenlistment; or any alien, or any Porto Rican not a citizen of the United States, of the age of twenty-one years and upward, who has enlisted or entered or may hereafter enlist in or enter the armies of the United States, either the Regular or the Volunteer Forces, or the National Army, the National Guard or Naval Militia of any State, Territory, or the District of Columbia, or the State militia in Federal service, or in the United States Navy or Marine Corps, or in the United States Coast Guard, or who has served for three years on board of any vessel of the United States Government, or for three years on board of merchant or fishing vessels of the United States of more than twenty tons burden, and while still in the service on a reenlistment or reappointment, or within six months after an honorable discharge or separation therefrom, or while on furlough to the Army Reserve or Regular Army Reserve after honorable service, may, on presentation of the required declaration of intention petition for naturalization without proof of the required five years' residence within the United States if upon examination by the representative of the Bureau of Naturalization, in accordance with the requirement of this subdivision it is shown that such residence can not be established; any alien serving in the military or naval service of the United States during the time this country is engaged in the present war may file his petition for naturalization without making the preliminary declaration

of intention and without proof of the required five years' residence within the United States; any alien declarant who has served in the United States Army or Navy, or the Philippine Constabulary, and has been honorably discharged therefrom, and has been accepted for service in either the military or naval service of the United States on the condition that he becomes a citizen of the United States, may file his petition for naturalization upon proof of continuous residence within the United States for the three years immediately preceding his petition, by two witnesses, citizens of the United States, and in these cases only residence in the Philippine Islands and the Panama Canal Zone by aliens may be considered residence within the United States, and the place of such military service shall be construed as the place of residence required to be established for purposes of naturalization; and any alien, or any person owing permanent allegiance to the United States embraced within the subdivision, may file his petition for naturalization in the most convenient court without proof of residence within its jurisdiction, notwithstanding the limitation upon the jurisdiction of the courts specified in section three of the Act of June twenty-ninth, nineteen hundred and six, provided he appears with his two witnesses before the appropriate representative of the Bureau of Naturalization and passes the preliminary examination hereby required before filing his petition for natu-

ralization in the office of the clerk of the court, and in each case the record of this examination shall be offered in evidence by the representative of the Government from the Bureau of Naturalization and made a part of the record at the original and any subsequent hearings; and, except as otherwise herein provided, the honorable discharge certificate of such alien, or person owing permanent allegiance to the United States, or the certificate of service showing good conduct, signed by a duly authorized officer, or by the masters of said vessels, shall be deemed prima facie evidence to satisfy all of the requirements of residence within the United States and within the State, Territory, or the District of Columbia, and good moral character required by law, when supported by the affidavits of two witnesses, citizens of the United States, identifying the applicant as the person named in the certificate or honorable discharge, and in those cases only where the alien is actually in the military or naval service of the United States, the certificate of arrival shall not be filed with the petition for naturalization in the manner prescribed; and any petition for naturalization filed under the provisions of this subdivision may be heard immediately, notwithstanding the law prohibits the hearing of a petition for naturalization during thirty days preceding any election in the jurisdiction of the court. Any alien who, at the time of the passage of this Act, is in the military service of the United States, who may not

be within the jurisdiction of any court authorized to naturalize aliens, may file his petition for naturalization without appearing in person in the office of the clerk of the court and shall not be required to take the prescribed oath of allegiance in open court. The petition shall be verified by the affidavits of at least two credible witnesses who are citizens of the United States, and who shall prove in their affidavits the portion of the residence that they have personally known the applicant to have resided within the United States. The time of military service may be established by the affidavits of at least two other citizens of the United States, which together with the oath of allegiance, may be taken in accordance with the terms of section seventeen hundred and fifty of the Revised Statutes of the United States after notice from and under regulations of the Bureau of Naturalization. Such affidavits and oath of allegiance shall be admitted in evidence in any original or appellate naturalization proceeding without proof of the genuineness of the seal or signature or of the official character of the officer before whom the affidavits and oath of allegiance were taken, and shall be filed by the representative of the Government from the Bureau of Naturalization at the hearing as provided by section eleven of the Act of June twenty-ninth, nineteen hundred and six. Members of the Naturalization Bureau and Service may be designated by the Secretary of Labor to administer oaths relat-

ing to the administration of the naturalization law; and the requirement of section ten of notice to take depositions to the United States attorneys is repealed, and the duty they perform under section fifteen of the Act of June twenty-ninth, nineteen hundred and six (Thirty-fourth Statutes at Large, part one, page five hundred and ninety-six), may also be performed by the Commissioner or Deputy Commissioner of Naturalization: *Provided*, That it shall not be lawful to make a declaration of intention before the clerk of any court on election day or during the period of thirty days preceding the day of holding any election in the jurisdiction of the court: *Provided further*, That service by aliens upon vessels other than of American registry, whether continuous or broken, shall not be considered as residence for naturalization purposes within the jurisdiction of the United States, and such aliens can not secure residence for naturalization purposes during service upon vessels of foreign registry.

(The other parts of the Act are not pertinent and are here omitted.)

O